IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT:

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

AND

THE HON'BLE Mr. JUSTICE C.V. RAMULU

WRIT PETITION No.8250 of 2005

Between:

M/s. Spares Corporation, 47-3-3, Dwaraka Nagar,
Visakhapatnam, Rep. by its sole Proprietor
Mr. A.S. Narayana

..... PETITIONER

AND

1) The Commercial Tax Officer,
Office situated at VUDA Complex,

Siripuram, Visakhapatnam.

2) The Government of A.P.,
Rep. by its Secretary(Finance),
Commercial Taxes, Secretariat Buildings,

Saifabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus declaring that the determination made by the Customs authorities as to the occassioning of an import of goods into, or export of goods out of, the territory of India, is binding upon the Sales Tax authorities for the purpose of prohibition from imposition of a tax under Article 286 (1) (b) of the Constitution and the same cannot be controverted, questioned or re-determined by the Sales Tax authorities which is illegal, arbitrary, *ultra vires*, without jurisdiction and unconstitutional, and to consequently direct the 1st respondent not to enforce sales tax on such export sales of the petitioner covered by export shipping bills issued by the customs authorities.

Counsel for the Petitioner: Mr. A.S. Narayana, PARTY-IN-PERSON

Counsel for the Respondents:G.P. FOR COMMERCIAL TAX

The Court made the following :

ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

Heard the party-in-person as well as the learned Government Pleader for Commercial Taxes and at their request, the writ petition itself is taken up for final disposal at the stage of admission.

Rule Nisi.

The petitioner in the instant writ petition prays for issuance of a Writ of *Mandamus* declaring "that the determination made by the Customs authorities as to the occasioning of an import of goods into, or export of goods out of, the territory of India, is binding upon the Sales Tax authorities for the purpose of prohibition from imposition of tax under Article 286 (1)(b) of the Constitution of India and the same cannot be controverted, questioned or re-determined by the Sales Tax authorities which is illegal, arbitrary, *ultra vires*, without jurisdiction and unconstitutional." The petitioner accordingly prays for issuance of a consequential direction directing the 1st respondent not to enforce sales tax on such export sales of the petitioner covered by the export shipping bills issued by the customs authorities.

That a general declaration, as prayed for by the petitioner, could not be granted by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, unless such issue crops up in an appropriate proceedings requiring any determination to be made by this Court.

The petitioner, in reality, is aggrieved by the proceedings of the Commercial Tax Officer, Daba Gardens, Visakhapatnam, dated 28-03-2005, whereunder the Commercial Tax Officer passed final assessment order determining the tax as under:

"The net turnover is liable to tax at the following rates:

1. 1st Sales of Machinery Spares Rs.8,21,950-00 @ 8% Rs. 65,756-00

2. 1st Sales of Machinery Spares

against Form – G Rs.4,25,350-00 @ 4% Rs. 17,014-00

3. 1st Sales Machinery Spares

(claimed as export sales) Rs.15,77,510-00 @ 8% Rs.1,26,201-00

---------- ----------

Rs.28,24,810-00 Rs.2,08,971-00

T.O.T. on 2nd Sales turnover Rs.96,885-00 @ 1% Rs. 969-00

Total tax due Rs.2,09,940-00

Tax paid Rs. 83,797-00

Balance Rs.1,26,143-00"

The petitioner, instead of filing an appeal before the appellate authority and availing the remedy under the provisions of the Act, has chosen to file the present writ petition seeking a general declaration, which cannot be granted by this Court at this stage. We are not inclined to interfere at this stage and consider the issue raised by the petitioner.

However, it shall be open to the petitioner to avail remedies that are available to it, in which event, the matter shall be considered on its own merits uninfluenced by dismissal of this writ petition.

The Writ Petition shall accordingly stand dismissed.

_____

B. SUDERSHAN REDDY, J

Date:13-04-2005.

_____

C.V. RAMULU, J

PV

To

1) The Commercial Tax Officer,
Commercial Tax Office, Vuda Complex,

Siripuram, Visakhapatnam.

2) The Secretary(Finance),
Government of A.P., Commercial Taxes,

Secretariat Buildings, Saifabad,
Hyderabad.

3) Two C.Cs. to G.P. for Commercial Taxes,

High Court of A.P., Hyderabad.

4) Two C.D. copies.